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No. 88-1297

Supreme Court, U.S.
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# In the Supreme Court
## OF THE
# United States

OCTOBER TERM, 1988

MARVIN GLICK and
BAUM, GLICK & WERTHEIMER,
*Petitioners,*

*vs.*

BASIL GEORGES, ALEXANDER GEORGES,
GEORGE J. GEORGES, TED GEORGES,
DOROTHY G. STACY, EFROSINI
DEREHANIS and DORA DEREHANIS,
*Respondents.*

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

**RESPONDENTS' BRIEF IN OPPOSITION**

Andrew D. Hurwitz*
MEYER, HENDRICKS, VICTOR,
OSBORN & MALEDON, P.A.
2700 North Third Street
Suite 4000
Phoenix, Arizona 85004
(602) 263-8700

**Counsel of Record for Respondents*

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## RESPONDENTS' BRIEF IN OPPOSITION

The respondents Basil Georges, Alexander Georges, George J. Georges, Ted Georges, Dorothy G. Stacy, Efrosini Derehanis, and Dora Derehanis, respectfully request that this Court deny the petition for writ of certiorari seeking review of the judgment of the United States Court of Appeals for the Seventh Circuit.

## STATEMENT OF THE CASE

1. The respondents were beneficiaries of a revocable *inter vivos* trust established by their uncle, William S. Deree. On January 30, 1986, they filed suit in the

United States District Court for the Northern District of Illinois, seeking monetary damages against the petitioners, who had served as Mr. Deree's legal counsel in connection with an amendment of the trust. The complaint asserted causes of action against petitioners for legal malpractice, breach of contract, breach of fiduciary duty, and interference with inheritance.

2. The sole issue in this case is whether the district court was deprived of subject matter jurisdiction over the complaint under the so-called "probate exception" to federal diversity jurisdiction. After discovery was completed and a pretrial statement filed, but without the benefit of any briefing or argument on the jurisdictional issue, the district court dismissed the complaint *sua sponte* pursuant to the "probate exception." (Pet. App. 12a).

3. A unanimous panel of the Seventh Circuit reversed the judgment of the district court, and remanded the case for disposition on the merits. (Pet. App. 1a). The Seventh Circuit found the "probate exception" inapplicable because (1) the case did not involve the actual probate of a will or affect a probate res (*id.* at 6a); (2) the suit would not disturb the finality of any probate proceedings (*id.*); (3) the prosecution of the case in the district court would not result in judicial diseconomy, since petitioners could not have been sued in the state courts of Arizona, where Mr. Deree's will was probated (*id.* at 6a–7a); and (4) the suit would not interfere with state probate proceedings, and was thus not "ancillary" to the probate of a will (*id.* at 6a).

## REASONS WHY THE WRIT SHOULD NOT BE GRANTED

1. The sole reasons presented by petitioners for granting certiorari are that the Seventh Circuit's opinion "violates Illinois public policy" and "misinterpreted Illinois case law." (Pet. 10–17). Even assuming *arguendo* that the Seventh Circuit so erred, the issues do not warrant the granting of certiorari. This Court has historically refrained from exercising its discretionary certiorari jurisdiction when the only issue presented is whether the court of appeals erred in its construction of routine issues of state law. *See, e.g., Ex parte Woods,* 143 U.S. 202 (1892).

2. In any event, this case presents no occasion for this Court to second-guess the Seventh Circuit's interpretation of Illinois law. "In dealing with issues of state law that enter into judgments of federal courts, we are hesitant to overrule decisions by federal courts skilled in the law of their particular states unless their conclusions are shown to be unreasonable." *Regents of University of Michigan v. Ewing,* 474 U.S. 214, 224 n.10 (1985). The petition makes no showing that this is the sort of extraordinary case which mandates departure from this wise rule.

3. The issues of Illinois law reviewed in the petition were not essential to the opinion of the Seventh Circuit. The court of appeals discussed Illinois law only briefly, and simply to demonstrate that this suit would not interfere in any state probate proceedings. (Pet. App. 7a). The bulk of the Seventh Circuit's opinion was devoted to demonstrating that this suit did not involve the probate of a will, would not affect the distribution of a

probate res, and would not result in any judicial diseconomy. (Pet. App. 6a–7a). These conclusions, which independently support the result reached by the Seventh Circuit, do not turn on interpretation of Illinois law, and are in fact not challenged in the petition.

4. This is simply a case where the Court of Appeals applied settled law concerning the "probate exception" to the particular facts before it. There are no "special and important reasons" for the granting of certiorari. *See* Rule 17, Rules of the Supreme Court of the United States.

## CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

Andrew D. Hurwitz*
MEYER, HENDRICKS, VICTOR,
OSBORN & MALEDON, P.A.
2700 North Third Street
Suite 4000
Phoenix, Arizona 85004
(602) 263-8700

*Counsel of Record for
Respondents

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